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MAR 05 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of:)
Hughes et al.) **DECISION ON PETITION TO**
Application No.: 08/825,492) **WITHDRAW HOLDING OF**
Filed: March 28, 1997) **ABANDONMENT**
For: SCHEME FOR MERGING)
PARTIALLY FILLED ATM CELLS)

This is a decision on the petition filed December 5, 2003, which is being treated as a petition to withdraw holding of abandonment pursuant to 37 C.F.R. § 1.181(a). No fee is required.

The petition is **GRANTED**.

This application was held abandoned for failure to take action subsequent to the Board of Patent Appeals and Interference's decision (paper No. 23) mailed August 27, 2002. A Notice of Abandonment was mailed October 24, 2003.

In support of the petition, petitioners provide a copy of a request for CPA, a certificate of express mailing, a non-publication request, a copy of a preliminary amendment filed with the request, a photocopy of payment submitted, a photocopy of the Express Mail receipt and a photocopy of the post card receipt which itemizes the aforementioned items and date stamped as received in the USPTO on October 18, 2002.

The original request for CPA, acknowledged as having been received in the USPTO on October 18, 2002, is not of record in the application file and cannot be located. However, M.P.E.P. § 503 states that "A post card receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." The fees for the CPA request and amendment, have been received and processed on October 22, 2002.

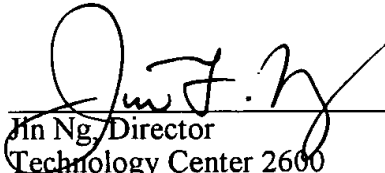
Petitioner has established that a timely request for CPA was filed and the Abandonment was the result of Office error in not matching the CPA to the application file. The Notice of Abandonment is vacated and the holding of abandonment withdrawn. The Office regrets any inconvenience caused by the mailing of the Notice of Abandonment.

MPEP §1214.07 Reopening of Prosecution states in part:

37 CFR 1.198. Reopening after decision.

Cases which have been decided by the Board of Patent Appeals and Interferences will not be reopened or reconsidered by the primary examiner except under the provisions of § 1.114 or § 1.196 without the written authority of the Commissioner, and then only for the consideration of matters not already adjudicated, sufficient cause being shown. Sometimes an amendment is filed after the Board's decision which does not carry into effect any recommendation made by the Board and which presents a new or amended claim or claims. In view of the fact that the prosecution is closed, the appellant is not entitled to have such amendment entered as a matter of right. However, if the amendment is submitted with a request for continued examination (RCE) under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e), the prosecution of the application will be reopened and the amendment will be entered. [emphasis added]

Given Applicants timely responded within the timeframe set forth from the Board's decision with an amendment and a request for CPA (which will be treated as a request for continued examination), the application file is being forwarded to the Technology Center support staff for entry and processing of the request for a CPA and amendment.


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